IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CR No. 90 of 2001

Date of Decision 20.7.2007

Duni Chand & anr. Petitioners.

Versus

Hans Raj Rana Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr.

Whether approved for reporting?

For the Petitioners : Mr. B.C. Negi, Advocate.

For the Respondent : None

Deepak Gupta, J (Oral).

This revision petition is directed against the order dated 24.2.2001 passed by the District Judge, Mandi in Civil Suit No.9 of 1999 whereby the suit filed by the plaintiffs has been dismissed in default.

The brief facts necessary for disposal of the petition are that the petitioners/plaintiffs had filed a suit for recovery of Rs. 3,84,199/- against the respondent/defendant. The defendant was proceeded against ex party and thereafter the matter was fixed for ex parte evidence of the plaintiffs on 23.9.2000. On 23.9.2000 the learned Presiding Officer i.e. District Judge, Mandi was on tour and the matter was fixed for proper orders. Thereafter, notices were issued to the plaintiffs for appearing in Court on 27.11.2000. On the said date, the case was adjourned to

24.2.2001 for ex parte evidence of the plaintiffs. On 24.2.2001 neither the plaintiffs were present nor any witness was summoned by them and the suit was dismissed for want of prosecution.

In the revision petition, this order has been challenged mainly on the ground that the counsel for the plaintiffs, namely, Shri H.C.Sharma, Advocate had suffered a heart attack in November, 2000 and initially hospitalized for two months and thereafter was advised bed rest for two months. It was in these circumstances that no counsel appeared on behalf of the plaintiffs on that date.

Keeping in view the entire facts and especially the fact that the counsel for the plaintiffs had suffered a heart attack, I feel that the party should not be penalized in the absence of the counsel due to his illness.

The respondent-defendant has not put in appearance despite notice and it is obvious that he is not contesting the present revision petition. The revision petition is accordingly allowed and the order of the learned District Judge dismissing the suit for want of prosecution is set aside and the suit is ordered to be restored to its original number.

The petitioners are directed to appear before the learned District Judge, Mandi on 3rd September, 2007. Due to the pecuniary jurisdiction of the trial Courts having been enhanced, this suit may have to be tried by the Civil Judge (Sr. Div). On the said date, the learned District Judge shall assign the suit to any Civil Judge (Senior Division) at Mandi and shall fix a date for the appearance of the plaintiffs. Though the defendant had been

proceeded against ex parte but since the suit had finally been dismissed in default, the learned trial Judge shall issue fresh notice to the defendant in the suit. Thereafter, he shall proceed with the suit in accordance with law.

The revision petition is disposed of in the aforesaid terms.

July 20, 2007. (Deepak Gupta), J.

s.